

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

11 JORNAY RECHURND RODRIGUEZ, )  
12 Petitioner, ) Case No. CV 12-7277-GW(AJW)  
13 vs. )  
14 E. VALENSUELA, Warden, ) MEMORANDUM AND ORDER  
15 Respondent. ) DISMISSING PETITION  
16 \_\_\_\_\_

17 **Background<sup>1</sup>**

18 In 1997, petitioner was convicted of first degree murder in Los  
19 Angeles County Superior Court Case No. BA131909. [Petition at 2]. He  
20 was sentenced to state prison for a term of 25 years to life. [Petition  
21 at 2].

22 In 2002, petitioner filed a habeas petition in this Court  
23 challenging his 1997 conviction. Case No. CV 02-8484-FMC(CT). The  
24 petition was denied on the merits on May 7, 2003. The Ninth Circuit  
25 Court of Appeals denied petitioner's application for a certificate of  
26 appealability.

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28 <sup>1</sup> Some of the following facts are obtained from the Court's  
files concerning petitioner's prior petitions. The Court takes  
judicial notice of such official court files. See Fed. R. Civ. P. 201;  
Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001).

1 Petitioner filed a second petition challenging his 1997  
 2 conviction. Case No. CV 08-6806(FMC)(CT). That petition was dismissed  
 3 as successive on November 4, 2008.

4 The present petition was filed on August 23, 2012. Like the  
 5 petition previously filed by petitioner, this petition challenges the  
 6 validity of petitioner's 1997 conviction and sentence in the Los  
 7 Angeles County Superior Court. [Petition at 2].

8 A federal court must dismiss a second or successive petition that  
 9 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). A  
 10 federal court must also dismiss a second or successive petition raising  
 11 a new ground unless the petitioner can show that (1) the claim rests on  
 12 a new, retroactive, constitutional right or (2) the factual basis of  
 13 the claim was not previously discoverable through due diligence, and  
 14 those new facts establish by clear and convincing evidence that but for  
 15 the constitutional error, no reasonable factfinder would have found the  
 16 applicant guilty of the underlying offense. 28 U.S.C. §  
 17 2244(b)(2)(A)-(B). It is not the district court, however, that decides  
 18 whether a second or successive petition meets the requirements  
 19 permitting a petitioner to file a second or successive petition.  
 20 Rather, "[b]efore a second or successive application permitted by this  
 21 section is filed in the district court, the applicant shall move in the  
 22 appropriate court of appeals for an order authorizing the district  
 23 court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see  
 24 Felker v. Turpin, 518 U.S. 651, 656-657 (1996). Absent authorization  
 25 from the Court of Appeals, this Court lacks jurisdiction over this  
 26 second or successive petition. Greenawalt v. Stewart, 105 F.3d 1268,  
 27 1277 (9th Cir.), cert. denied, 519 U.S. 1102 (1997).

1 Because petitioner has not obtained leave from the Court of  
2 Appeals to file a successive petition, this court lacks jurisdiction to  
3 consider it. Accordingly, the petition for a writ of habeas corpus is  
4 dismissed for lack of jurisdiction.

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6 Dated: August 29, 2012



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8 George H. Wu  
9 United States District Judge

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11 JORNAY RECHURND RODRIGUEZ, )  
12 Petitioner, ) Case No. CV 12-7277-GW(AJW)  
13 )  
vs. )  
14 )  
E. VALENZUELA, Warden, ) JUDGMENT  
15 )  
Respondent. )  
16 \_\_\_\_\_)

17 It is hereby adjudged that the petition for a writ of habeas  
18 corpus is dismissed for lack of jurisdiction.  
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20 Dated: \_\_\_\_\_  
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22 \_\_\_\_\_  
23 George H. Wu  
United States District Judge  
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